A

ASMTH SDN BHD & ANOR

v.

PENTADBIR TANAH DAERAH JOHOR BAHRU & ANOR

B

HIGH COURT MALAYA, JOHOR BAHRU
SYED AHMAD HELMY J
[COURT APPLICATION REVIEW NO:
[MT-41] 25-23-2003]
C 28 JUNE 2005

ADMINISTRATIVE LAW: *Judicial review - Application for - Applicant sought order for certiorari to quash land administrator's award and decision to refuse to refer certain issues to High Court - Reference of* D *certain questions to High Court under s. 36(2) Land Acquisition Act 1960 - Issues for determination - Whether application barred under s. 68 of the Land Acquisition Act 1960 - Whether reference to High Court under s. 36(2) of Land Acquisition Act 1960 precedes an award - Whether applicants provided bona fide reasons for filing application while* E *a land reference under s. 37 of Land Acquisition Act 1960 pending in different forum - Whether application bad for duplicity - Whether land administrator acted correctly when rejecting applicant's request to refer to High Court under s. 36(2) of Land Acquisition Act 1960 - Whether acquisition proceedings invalidated by alleged early entry into possession* F *and demolition of buildings on subject lands prior to date of gazette notification - Whether land administrator must refer questions of interpretation that arose in the course of enquiry to court for determination - Whether court grants an order of certiorari and mandamus*

G The subject matter of the application for judicial review herein was related to two plots of land in the township of Johor Bahru ('the subject lands') acquired by the authorities under the Land Acquisition Act 1960 ('the Act').The Johor State Government had earlier executed a privatization agreement with ASMD Development (Johor) Sdn Bhd ('the company'). In consideration H of the company performing the obligations contained therein, the Johor State Government agreed to alienate the subject lands to the company or to Maju Holdings ('the second applicant'). The first applicant, ASMTH Sdn Bhd, acquired an interest in the subject lands pursuant to a share allotment agreement and was at I the time of the acquisition the registered owner of the 99 year lease on the subject lands. On 13 February 2003, the State

Authority published a declaration in Form D in the Gazette pursuant to s. 8 of the Act, stating that the subject lands were acquired for a project. On 3 April 2003, the land administrator published Form E to fix the date of an inquiry for the hearing of claims to compensation for all interests in the subject lands. The land administrator subsequently issued a certificate of urgency in Form I under s. 19 of the Act, certifying that the subject lands were urgently required for a public purpose. Form K was also issued under s. 22 of the Act to give notice that the land administrator had taken possession of the subject lands. Both Forms I and K, dated 25 April 2003, were sent to the first applicant under a cover letter dated 7 May 2003. The applicants, however, claimed that their inquiries disclosed that Jabatan Kerja Raya had entered the land on 20 January 2003 and since then, buildings on the subject lands have been demolished and clearing and development work had been carried out. If true, the entry into possession was before Forms D, I and K were published or issued. Thus, the applicants contended that this premature entry into possession of the subject lands tainted the entire acquisition proceeding and rendered it null and void.

An enquiry under s. 12 of the Act was held where the applicants made a written application to the land administrator to refer certain questions to the High Court under s. 36(2) of the Act. The applicants submitted to the land administrator that the validity of the acquisition due to the premature entry into possession and the interpretation of the privatization agreement were questions that ought to be referred to the High Court for determination. The land administrator rejected the application to refer to the High Court the questions the applicants had framed. The land administrator proceeded to hear the claims for compensation for all interests in the subject lands and awarded a certain amount as compensation for the acquisition of the subject lands. The applicants filed Form N under s. 38(1) of the Act to object to the award and required the objection to be referred to the High Court. Thus, this present application for judicial review. The applicant sought for an order of *certiorari* to remove into this court and quash the land administrator's award or alternatively, to quash both the award and the decision to refuse to refer to the High Court the questions the applicants had raised. The issues for determination were: (i) whether this application was barred under s. 68 of the Act; (ii) whether the subsistence of this application together with a land reference proceeding under s. 37 of the Act

caused a duplicity of proceedings; (iii) whether the acquisition proceeding was invalidated by the alleged early entry into possession and the demolition of the buildings on the subject lands prior to the date of the gazette notification; and (iv) whether the land administrator ought to have referred to the High Court pursuant to s. 36(2) of the Act the questions regarding the validity of the acquisition proceeding in light of the alleged premature entry into the subject lands and the interpretation of the privatization agreement.

Held (granting order of *certiorari* and *mandamus*):

(1) This present application for judicial review for an order of *certiorari* does not fall within the scope of the word 'suit' in s. 68 of the Act. Under the existing provisions of the Rules of the High Court 1980 *certiorari* proceedings are instituted under the mechanism of judicial review and hence does not and cannot fall within the prohibitory provision of s. 68 of the Act. This application, consequently, was not barred by that section. (para 13)

(2a) A reference to the High Court under s. 36(2) of the Act precedes an award since the questions that may be referred under the section would have a bearing on the size of the award or the person(s) to whom the compensation is payable, and if more than one, the manner in which the compensation is to be apportioned between those persons. Naturally, such issues may arise during the course of an enquiry. Once referred to the High Court and duly determined, the land administrator would proceed with the enquiry and deal with those issues in accordance with the determination of the High Court. Section 37 of the Act, on the contrary, deals with a situation where the land administrator has made an award and an objection is taken on any one or more of the specified grounds. The legislature envisaged that the recourse to the court under s. 36(2) would be invoked before an award is made and the enquiry complete since a determination by the court under s. 36(2) would have a direct bearing on the ultimate result of the enquiry. Since ss. 36(2) and 37 of the Act are designed to cater to distinct circumstances, this application was not bad for duplicity. (paras 22 & 23)

(2b) The applicants have provided a *bona fide* reason for filing this application while a land reference under s. 37 of the Act was pending in a different forum. The second applicant had no *locus standi* in the land reference but nevertheless has an interest resulting from the privatization agreement. The fact that the second applicant has no legal standing to ventilate its grievance in the land reference is a *bona fide* reason that justified this simultaneous but different course of action. The applicant herein sought determination from this court if the land administrator had acted correctly when he rejected the applicants' request to refer to the High Court under s. 36(2) of the Act certain questions they had framed. This application was neither unnecessary nor unreasonable and certainly not illogical or an abuse of process given the peculiar circumstances. Hence, this application was not bad for duplicity. (paras 24 & 25)

(3) The State took formal possession of the scheduled lands in this case when Form D was published in the Gazette. The fact that Form K was issued later was irrelevant since compliance with s. 9(1) (which operates jointly with s. 22) was not mandatory. As formal possession of the scheduled lands could only be taken after the publication of the declaration in the Gazette, taking possession prior to that would be an act devoid of legal authority and consequently illegal. If a landowner was evicted from his property under such circumstances, the State would be liable for trespass and a subsequent publication of a declaration has no retrospective effect. The State would be open to a suit for damages for trespass in cases where the State has prematurely taken possession of scheduled land. However, there was no merit in the contention that trespass into scheduled land prior to publication of the declaration in the Gazette rendered the entire acquisition proceeding null and void. The publication of the declaration in the Gazette placed the acquisition proceedings in motion when viewed from the vantage point that at this juncture, the State has decided that the scheduled land was required for the purposes specified in s. 3 of the Act. As long as the declaration was not in any way defective, the acquisition was properly commenced. Once the declaration was published,

A the State's possession of the land after the date of publication was legal. Just as the declaration could not operate retrospectively to validate the possession of the land prior to its publication, early entry onto the land likewise could not invalidate a declaration that was later properly
B published. If the allegation of premature entry in this case were true, the effect of the publication of the declaration in the Johor Gazette was simply this – the possession of the scheduled lands, formal or physical, after the date of publication was proper and legal, and possession of the
C scheduled lands prior to the publication was improper, thereby giving the dispossessed owner the right to claim damages for trespass from the date the State took possession of the lands up to the date the declaration was published in the Gazette. (paras 34 & 36)

D

(4a) The word 'may' in s. 36(2) of the Act ought to be interpreted as imperative and the land administrator must refer a question of interpretation that arose in the course of an enquiry to the court for determination. Once the court
E has determined the proper interpretation, the land administrator could then proceed to exercise his decision making powers having regard to the interpretation given by the court. Section 36(2) of the Act was not enacted in vain. If there arose difficult questions of interpretation or
F construction during an enquiry, the legislature has provided the land administrator with an avenue to obtain an authoritative and decisive answer to the question by recourse to the court. This recourse was provided for the 'sake of justice' so that the land administrator could exercise his
G quasi-judicial functions in an enquiry armed with a judicial ruling on the question of construction relevant to a matter to be decided at the enquiry. (paras 48 & 49)

(4b) The privatization agreement gave rise to questions of interpretation that would have a bearing on the
H compensation payable. The privatization agreement herein dealt with the development of the lands that have been compulsorily acquired. Since the agreement dealt with the development of the land and created rights in the land, it
I created a legitimate expectation for the parties deriving any title or benefit under it. Through the agreement, the State

on the one part had alienated the lands in exchange for the other party's obligation to develop the lands accordingly. The other party, naturally, benefited from privatization agreement through the control of the lands and the developments thereon for the duration of the lease of the alienated lands. The State, having alienated the lands to the first applicant, now sought to re-acquire it. The State may certainly do so pursuant to the provisions of the Act but in assessing compensation, the interpretation of the privatization was material. As the interpretation of the privatization raised complex and difficult questions of construction which a judicial tribunal would be better equipped to deal with, the land administrator, being an administrative person who would benefit from a ruling from the court on the issue, was obliged to refer the question of the interpretation of the agreement to the court under s. 36(2) of the Act. (paras 50 & 51)

[This court grants an order of certiorari to quash the order of the first respondent refusing to refer to the court the aforesaid question and an order of mandamus directing the first respondent to refer the said question to the court for determination under s. 36(2) of the Act. Costs of this application to the applicants.]

Case(s) referred to:

Ambujan Menon & Ors v. State of Kerala AIR [1966] Ker 187 ***(refd)***

Berjaya Industrial Berhad & Anor v. Public Bank (L) Ltd & Ors [1995] 4 CLJ 504 HC ***(refd)***

Eddie Lee Lim Tak v. JK Development Sdn Bhd [1997] 3 CLJ 894 HC ***(refd)***

General Electric Co Ltd v. Price Commission [1975] ICR 1 ***(refd)***

Glen Waverley Sdn Bhd v. Pengarah Tanah & Galian, Negeri Selangor & Anor [2001] 8 CLJ 164 HC ***(refd)***

Hong Lee Trading & Construction Sdn Bhd v. Taut Ying Realty Sdn Bhd [1991] 1 CLJ 121; [1991] 2 CLJ (Rep) 722 HC ***(refd)***

Jamiah Mohd Deris v. Pentadbir Tanah Daerah Melaka Tengah [1996] 2 BLJ 453 HC ***(refd)***

Khub Chand v. State of Rajasthan AIR [1967] SC 1674 ***(refd)***

London & Clydeside Estates Ltd v. Aberdeen District Council & Anor [1980] 1 WLR 182 ***(refd)***

Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan Tanggungan [1999] 3 CLJ 65 FC ***(refd)***

Oriental Rubber & Oil Palms Sdn Bhd v. P HT Kuantan [1983] 1 MLJ 315 ***(refd)***

A *Pahang South Union Omnibus Co Bhd v. Minister of Labour and Manpower & Anor [1981] 2 MLJ 199* ***(refd)***
Palatine Graphic Arts Co Ltd v. Liverpool City Council [1986] QB 335 ***(refd)***
Pemungut Hasil Tanah Daerah Barat Daya (Balik Pulau) Pulau Pinang v. Kam Gin Paik & Ors [1983] 2 MLJ 390 ***(refd)***
B *Pemungut Hasil Tanah Daerah Barat Daya Pulau Pinang v. Ong Gaik Kee [1983] 2 MLJ 35* ***(refd)***
Perbadanan Nasional Insurans Sdn Bhd v. Pua Lai Ong [1996] 3 CLJ 321 CA ***(refd)***
Pow Hing v. Registrar of Titles [1981] 1 MLJ 155 ***(refd)***
C *Pyx Granite Co Ltd v. Ministry of Housing and Local Government & Ors [1960] AC 260* ***(refd)***
Rex v. London County Council Ex parte Swan and Edgar (1927) Ltd [1929] 141 LT 590 ***(refd)***
Rickets v. Metropolitan Railway Co [1865] 34 LJQB 257 ***(refd)***
D *S Kulasingam & Anor v. Commissioner of Lands, Federal Territory & Ors [1982] CLJ 65; [1982] CLJ (Rep) 314 FC* ***(refd)***
State of Bombay v. Chatrabuj AIR [1966] Guj 185 ***(refd)***
Sussex Peerage Case [1884] II CI & Fin 85 ***(refd)***
Thanimalai & The Government of Malaysia v. Lee Ngo Yew [1975] 1 MLJ 125 ***(refd)***
E *Yew Lean Finance Development (M) Sdn Bhd v. Director of Lands & Mines, Penang [1977] 2 MLJ 45* ***(refd)***

Legislation referred to:
Federal Constitution, art. 13(1), (2)
F Land Acquisition Act 1960, ss. 2, 3, 8, 9(1), 10, 12, 18, 19, 22, 36(2), 37(1), 38(1), 68
Rules of the High Court 1980, O. 15 rr. 1(1)(a), 5(1)

For the applicants - Dato' RR Sethu; M/s RR Sethu (Dato' R Rajasingam; M/s R Rajasingam & Co with him)
G *For the respondents - Tuan Yaacob Hj Mad Sam*

Reported by Suhainah Wahiduddin

H
JUDGMENT

Syed Ahmad Helmy J:

[1] The subject matter of the application for judicial review herein relates to two plots of land, HS(D) 216744 Lot PTB I 20032 and HS(D) 216743 Lot PTB 20113 in the Township of Johor Bahru with an approximate area of 0.85627 hectares and

2.35072 hectares respectively (hereinafter called "the subject lands") which was acquired by the authorities under the Land Acquisition Act 1960 ("the Act"). The Johor State Government had earlier executed a privatisation agreement dated 23 May 1993 with ASMD Development (Johor) Sdn Bhd. In consideration of the company performing the obligations contained therein, the Johor State Government agreed to alienate the subject lands to ASMD Development (Johor) Sdn. Bhd. (hereinafter called "the company") or to Maju Holdings Sdn. Bhd., the second applicant. At the material time, the second applicant was a subsidiary of the company and also the corporate guarantor of the company's obligations under the privatisation agreement. The lands were eventually alienated to the second applicant. The first applicant, ASMTH Sdn. Bhd., acquired an interest in the subject lands pursuant to a share allotment agreement dated 8 April 1996 and was at the time of the acquisition the registered owner of the 99 year lease on the subject lands.

[2] On 13 February 2003, the State Authority published a declaration in Form D in the Gazette pursuant to s. 8 of the Act. The declaration stated that the subject lands were being acquired for "Projek Pembangunan Pusat Pemeriksaan Kastam, Imigresen Dan Kuarantin Untuk Kementerian Kewangan Malaysia". On 3 April 2003, the Land Administrator published Form E to fix the date of an inquiry for the hearing of claims to compensation for all interests in the subject lands. The Land Administrator also sent Form F to the first applicant the same day requiring, among others, a valuation of the subject lands showing the basis upon which such valuations are made.

[3] The Land Administrator subsequently issued a certificate of urgency in Form I under s. 19 of the Act. In it, the Land Administrator certified that the subject lands were urgently required for a public purpose. Form K was also issued under s. 22 of the Act to give notice that the Land Administrator had taken possession of the subject lands. Both Forms I and K were dated 25 April 2003 and were sent to the first applicant under a cover letter dated 7 May 2003. The applicants, however, claimed that Forms I and K were served on the first applicant on 13 May 2003. Be that as it may, the applicants alleged that the entry into possession was in January 2003. The applicants claimed that their

inquiries disclosed that Jabatan Kerja Raya had entered the land on 20 January 2003 and since then, buildings on the subject lands have been demolished and clearing and development work had been carried out. If true, the entry into possession was before Forms D, I and K were published or issued. The applicants contend that this premature entry into possession of the subject lands taints the entire acquisition proceeding and renders the proceeding null and void.

[4] The enquiry under s. 12 of the Act commenced on 26 May 2003. At the inquiry on that day, the applicants handed a copy of the privatisation agreement to the Government Valuer. The applicants' claim that the Government Valuer had not sighted the agreement prior to that date and had, consequently, failed to take it into account in arriving at his valuation. The enquiry was then adjourned to 3 July 2003 on the applicants' request. The reason recorded for the adjournment was for the registered owner to prepare a complete list of compensation claimed in relation to the acquisition of the subject lands.

[5] When the enquiry resumed on 3 July 2003, the applicants made a written application to the Land Administrator to refer certain questions to the High Court under s. 36(2) of the Act. The applicants submitted to the Land Administrator that the validity of the acquisition due to the premature entry into possession and the interpretation of the privatisation agreement were questions that ought to be referred to the High Court for determination. The Land Administrator adjourned the enquiry to a date to be fixed to consider the matter.

[6] By a letter dated 22 July 2003, the Land Administrator gave notice to reconvene the enquiry on 31 July 2003. At the resumed enquiry, the Land Administrator rejected the application to refer to the High Court the two questions the applicants had framed. The Land Administrator proceeded to hear the claims for compensation for all interests in the subject lands. The applicants participated under protest and claimed compensation amounting to RM280 million but produced no valuation report in support of the claim. The Government called two valuers and produced valuation reports for the subject lands. The reports recommended compensation amounting to RM73,279,721.50 for the subject lands. The Land Administrator awarded RM73,279,721.50 as

compensation for the acquisition of the subject lands and issued Forms G and H. The applicants have filed Form N under s. 38(1) of the Act to object to the award and require the objection to be referred to the High Court. That Land Reference has been stayed by an order of this court pending the disposal of this application. The stay was granted on 10 March 2004 as the learned State Legal Adviser raised no objections when the request for a stay was made.

[7] The present application is for judicial review and the applicants are seeking certain prerogative orders from the High Court. Leave to apply for the prerogative orders was granted to the applicants by an order dated 29 September 2003. The application seeks the following relief(s):

1. An order of *certiorari* to be issued to remove into this court for the purpose of being quashed the Order of the Land Administrator, Johor Bahru ("the 1st respondent") made on 31 July 2003 whereby he made an award of compensation to be payable to the 1st applicant in the sum of RM73,279,721.50 for the acquisition of the whole of the 1st applicants land held under HS(D) 216744 and HS(D) 216743 for Lots PTB 20032 and PTB 20114 in Bandar Johor Bahru in the District of Johor Bahru in the State of Johor ("the said lands");

2. Alternatively for

   a. an order of *certiorari* to be issued to remove into this court for the purpose of being quashed the order of the 1st respondent made on 31 July 2003 whereby he

      i. refused the 1st applicant's application to refer the questions of law to this Honourable Court under s. 36(2) of the Land Acquisition Act; and

      ii. made an award of compensation to be payable to the 1st applicant in the sum of RM73,279,721.50 for the acquisition of the said lands;

   b. an order of *mandamus* directing the 1st respondent

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i. to refer to this Honourable Court for its determination the questions of law raised by the 1st applicant on the interpretation of the privatisation agreement dated 23 May 1993 between the State Government of Johor and the State Secretary Incorporated on the one part
B and the 2nd applicant on the other part on the alienation of the said lands; and

ii. upon the decision of this Honourable Court on the said questions of law directing the 1st respondent to
C re-determine the compensation payable for the compulsory acquisition of the said lands;

3. such further or other reliefs as may seem just;

4. the costs of this application.

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[8] This application raises two substantive issues that require determination. Those issues are:

1. Whether the acquisition proceeding was invalidated by the
E alleged early entry into possession and the demolition of the buildings on the subject lands prior to the date of the gazette notification; and

2. Whether the Land Administrator ought to have referred to the High Court pursuant to s. 36(2) of the Act the questions
F regarding the validity of the acquisition proceeding in light of the alleged premature entry into the subject lands and the interpretation of the privatisation agreement.

[9] The learned State Legal Adviser has, however, raised two
G technical issues on behalf of the respondents, namely:

1. Whether this application is barred under s. 68 of the Act; and

2. Whether the subsistence of this application together with a land reference proceeding under s. 37 of the Act causes a
H duplicity of proceedings.

[10] Being procedural objections in nature, this application can be dismissed *in limine* if either objection is sustained without having to consider the merits of the application, which are the
I substantive issues I have stated earlier. That being the case, it is only appropriate to consider the respondents objections first.

Whether This Application Is Barred Under s. 68 Of The Act

[11] Section 68 of the Act provides that no suit shall be brought to set aside an award or apportionment made under the Act. Section 2 of the Act, which is the interpretation section, does not define the word "suit". Learned counsel for the applicants contends that this application for judicial review is not a "suit" for the purposes of s. 68 of the Act. The word "suit" in that section does not encompass an application filed to challenge the validity of the acquisition proceeding or one that is filed to question an abuse of discretion or failure of the Land Administrator to exercise his statutory powers.

[12] In support of this contention, learned counsel for the applicants cites *Pemungut Hasil Tanah Daerah Barat Daya Pulau Pinang v. Ong Gaik Kee* [1983] 2 MLJ 35. In that case, some 42 acres of land in the south west district of Penang was compulsorily acquired. The Penang State Authority published the declaration under s. 8 of the Act in the Gazette on 25 April 1974. For seven years nothing transpired. The enquiry under s. 10 of the Act only commenced on 15 June 1981. When notice of the enquiry was given, the landowner objected on the ground that any further proceedings in the acquisition would be void in light of the long delay. The Land Administrator, nevertheless, proceeded with the enquiry and an award was made on 7 July 1981. Aggrieved by the action of the Land Administrator, an application was made to the High Court for an order of *certiorari* to quash the enquiry and the award. The High Court granted the order. Dissatisfied, the Land Administrator appealed to the then Federal Court. Among the grounds of appeal was that the High Court had erred in law in failing to consider s. 68 of the Act. The Federal Court on this point held that the word "suit" does not extend to include an application for *certiorari* and cited *Rex v. London County Council Ex parte Swan and Edgar (1927) Ltd* [1929] 141 LT 590 as authority. A different bench of the Federal Court in *Pemungut Hasil Tanah Daerah Barat Daya (Balik Pulau) Pulau Pinang v. Kam Gin Paik & Ors* [1983] 2 MLJ 390 reaffirmed this, with Hashim Yeop A Sani FJ stating:

> The appellant then raises the effect of section 68 of the Land Acquisition Act which the appellant contends amounts to a bar to any proceeding other than a reference to the High Court for the purpose of determining the market value of the land. This same question was answered briefly in *Ong Gaik Kee*'s case which held that section 68 does not extend to include *certiorari*.

[13] The statutory statement filed in this application challenges the validity of the acquisition and the award. The applicants seek for an order of *certiorari* to remove into this court and quash the Land Administrator's award or alternatively, to quash both the award and the decision to refuse to refer to the High Court the questions the applicants had raised. Based on the authority of both *Ong Gaik Kee*'s case and *Kam Gin Paik*'s case, it is clear that the present application for judicial review for an order of *certiorari* does not fall within the scope of the word "suit" in s. 68 of the Act. Under the existing provisions of the Rules of the High Court 1980 *certiorari* proceedings are instituted under the mechanism of judicial review and hence does not and cannot fall within the prohibitory provision of s. 68 of the Act. This application, consequently, is not barred by that section and this first question the respondents have raised must accordingly be answered in the negative.

Whether The Subsistence Of This Application Together With A Land Reference Proceeding Under s. 37 Of The Act Causes A Duplicity Of Proceedings

[14] The rule against duplicity or multiplicity of proceedings is housed in O. 15 r. 1(1)(a) of the Rules of the High Court 1980 read together with r. 5(1). These rules provide:

> 1(1) Subject to rule 5(1), a plaintiff may in one action claim relief against the same defendant in respect of more than one cause of action:
>
> (a) if the plaintiff claims, and the defendant is alleged to be liable, in the same capacity in respect of all the causes of action.
>
> 5(1) If claims in respect of two or more causes of action are included by a plaintiff in the same action or by a defendant in a counterclaim, of if two or more plaintiffs or defendants are parties to the same action, and it appears to the Court that the joinder of causes of action or of parties, as the case may be, may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other order as may be expedient.

[15] The High Court has power to dismiss a proceeding on the ground of duplicity. This power is expressly included in the additional powers of the High Court enumerated in the Schedule to the Courts of Judicature Act 1964. Paragraph 11 of the Schedule provides that the High Court has:

> Power to dismiss or stay proceedings ... where by reason of multiplicity of proceedings in any court or courts the proceedings ought not to be continued.

[16] Abdul Malek Ahmad J (now PCA) succinctly explained the effects of duplicity or multiplicity of proceedings in *Berjaya Industrial Berhad & Anor v. Public Bank (L) Ltd & 3 Ors* [1995] 4 CLJ 504. His Lordship said:

> The crux of the problem lies in the fact that as on the date of the hearing of this matter, there appear to be two sets of judicial proceedings in different jurisdictions involving the same parties in different capacities on the same subject matter. The obvious effect of this multiplicity of proceedings is that it would give rise to the possibility of two conflicting judgments apart from the other problems of convenience, time and expenses incurred for witnesses and Counsel.

[17] The learned State Legal Adviser submits that this application is bad for duplicity and ought to be dismissed on this score. This attack is mounted on the ground that there is a Land Reference pending before another branch of the High Court arising out of the same acquisition. It was argued that the issues raised in this application could be aired in the Land Reference. Bearing in mind that the rationale behind the rule against duplicity is to avoid the possibility of conflicting judgments on the same matter as well as to save time and expense, the contention of the learned State Legal Adviser at first blush appears to be a legitimate attack on the present application. However, on closer scrutiny of the salient facts, it may be more expedient in the circumstances of this case to bring separate actions and the present application may not in fact offend the spirit of the rule against duplicity. I say so for reasons that now follow.

[18] A Land Reference is a proceeding brought under s. 37(1) of the Act. That section reads:

A Any person interested in any scheduled land who, pursuant to any notice under section 10 or 11, has made a claim to the Land Administrator in due time and who has not accepted the Land Administrator's award thereon, or has accepted payment of the amount of such award under protest as to the sufficiency thereof, may, subject to this section, make objection to:

B

(a) the measurement of the land;

(b) the amount of the compensation;

C (c) the persons to whom it is payable;

(d) the apportionment of the compensation.

[19] The plain language of s. 37 of the Act suggests that the scope of a Land Reference is limited. The first part of the section D limits it only to a person interested in the land who has made a claim to the Land Administrator in due time. The Act defines a "person interested" to include every person claiming an interest in compensation to be made on account of the acquisition of land under the Act, but not a tenant at will. If a person satisfies this E part, the second part of s. 37 further limits the scope of the section to only those persons who have rejected the Land Administrator's award or accepted it under protest as to the sufficiency of the award. A person who comes within this scope may then make an objection to one or more of the four items F listed in the section.

[20] Two things are evident here. Firstly, the second applicant, who is not presently the registered proprietor or having any interest in the scheduled lands, would not have any *locus* to be heard in the Land Reference. Secondly, a Land Reference is G meant to only deal with the four limbs of objections contained in s. 37 and that being the case, it ought to be permissible for matters that do not fall within any one of those limbs to be pursued in a different forum. On the issue of the *locus* of the second applicant, if indeed the interpretation of the privatisation H agreement were relevent for purposes of considering the compensation payable for the scheduled land, then the second applicant has a legitimate interest to be heard. That legitimate interest stems from the vested interest the second applicant has in the privatisation agreement. Furthermore, if the privatisation I agreement were relevant to the determination of the amount of

compensation payable for the scheduled lands, the second applicant being a party to the privatisation agreement with the State Government from inception would be in a position to give relevant evidence on matters relating to the privatisation. Such evidence would naturally have a bearing on the interpretation of the privatisation agreement.

[21] Now, this application, among others, seeks to compel the Land Administrator to refer several questions of law relating to the privatisation agreement to the High Court. Learned counsel for the applicants argues that there is no duplicity because s. 36(2) of the Act is an independent provision which serves a specific purpose. Learned counsel argues, and I agree, that s. 36(2) of the Act precedes any award of compensation and subsequent reference under s. 37. This much is clear from the language of s. 36(2) of the Act, which reads:

> The Land Administrator may, at any time of his own motion by application in Form M refer to the Court for its determination any question as to:
>
> (a) the true construction or validity or effect of any instrument;
>
> (b) the person entitled to a right or interest in land;
>
> (c) the extent or nature of such right or interest;
>
> (d) the apportionment of compensation for such right or interest;
>
> (e) the persons to whom such compensation is payable;
>
> (f) the costs of any enquiry under this Act and the persons by whom such costs shall be borne.

[22] A reference to the High Court under s. 36(2) of the Act precedes an award since the questions that may be referred under the section will have a bearing on the size of the award or the person(s) to whom the compensation is payable, and if more than one, the manner in which the compensation is to be apportioned between those persons. Naturally, such issues may arise during the course of an enquiry. Once referred to the High Court and duly determined, the Land Administrator would proceed with the enquiry and deal with those issues in accordance with the determination of the High Court. Section 37 of the Act, on the contrary, deals with a situation where the Land Administrator has made an award and an objection is taken on any one or more of

A the specified grounds. The legislature envisaged that the recourse to the court under s. 36(2) would be invoked before an award is made and the enquiry complete since a determination by the court under s. 36(2) would have a direct bearing on the ultimate result of the enquiry. Since ss. 36(2) and 37 of the Act are designed to
B cater to distinct circumstances, this application is not bad for duplicity.

[23] Having two separate proceedings, that is a Land Reference as well as the present application for prerogative orders, may also
C be permissible on a different score. If the applicants here satisfy the principles Abdul Aziz J (now JCA) set out in *Eddie Lee Lim Tak v. JK Development Sdn. Bhd.* [1997] 3 CLJ 894, the present application may not offend the rule against multiplicity of proceedings. In this regard, I gratefully adopt the following passage
D from the judgment of learned judge in that case:

> The proposition that, where statute provides two or more courses of action for obtaining remedies, a person qualified to take either of the courses has the right to take both courses and cannot be deprived of it is too sweeping a proposition. A right is to be
E pursued with *bona fide* reasons and for a *bona fide* purpose. Where pursuit of all the courses is unnecessary, unreasonable or illogical in the given circumstances of a case, there is an abuse of the right available through some one or other of the courses in insisting on following all the courses, and coming to Court to
F pursue all those rights is an abuse of the process of the Court.

[24] To my mind, the applicants have provided a *bona fide* reason for filing this application while a Land Reference under s. 37 of the Act is pending in a different forum. The second applicant has no *locus* in the Land Reference but nevertheless has an interest
G resulting from the privatisation agreement. The fact that the second applicant has no legal standing to ventilate its grievance in the Land Reference is a *bona fide* reason that justifies this simultaneous but different course of action. I am also of the view that this application was filed for a *bona fide* purpose. The
H application seeks determination from this court if the Land Administrator had acted correctly when he rejected the applicants' request to refer to the High Court under s. 36(2) of the Act certain questions they had framed. This application in my view, consequently, is neither unnecessary nor unreasonable and
I certainly not illogical or an abuse of process given the peculiar

circumstances of this case. Furthermore, the learned State Legal Adviser undermined his attack on this application on the ground of duplicity when he did not object to the applicants request for a stay of the Land Reference.

[25] For the foregoing reasons, I am of the view that this application is not bad for duplicity and the second question the respondents have raised is as a result answered in the negative.

Whether The Acquisition Proceeding Was Invalidated By The Alleged Early Entry Into Possession And The Demolition Of The Buildings On The Subject Lands Prior To The Date Of The Gazette Notification

[26] The applicants allege that the first respondent had entered into possession of the scheduled lands and demolished buildings thereon prior to the publication of Form D in the Gazette. The applicants contend that the entire acquisition proceeding is null and void as a result of the alleged premature entry into possession. Learned counsel for the applicants argued that the acquiring authority must strictly comply with the provisions of the Act and failure to do so invalidates the acquisition proceeding. Reference was made to *Yew Lean Finance Development (M) Sdn. Bhd. v. Director of Lands & Mines, Penang* [1977] 2 MLJ 45 and *Oriental Rubber & Oil Palms Sdn. Bhd. v. P. HT Kuantan* [1983] 1 MLJ 315. Admittedly, there is authority for the proposition that the acquiring authority ought to strictly comply with the provisions of the Act and failure to do so could strike at the validity of the acquisition itself. I need go no further than to quote the following passage from the judgment of Suriyadi Halim Omar J in *Jamiah Mohd. Deris v. Pentadbir Tanah Daerah Melaka Tengah* [1996] 2 BLJ 453:

> Whenever Parliament passes a law in which the rights of a citizen is slowly being whittled away, provisions are also included which will balance the rights of the citizen *vis-a-vis* the machinery of the government. In that kind of scenario ... strict compliance with the law is a must (see *United Malayan Banking Corporation Bhd. v. Sharikat Perumahan Luas Sdn. Bhd. (No 2)* [1988] 3 MLJ 352 at 3551). Looking at the provisions of the Land Acquisition Act the intention of the legislature surely must be read together with the consideration of the social and proprietary rights of the citizen.

I agree with the view expressed in this passage and gratefully adopt it.

[27] Although the legislature requires strict compliance with statutory procedure for the exercise of legal authority and legitimately expects such procedure to be followed down to the infinitesimal detail, non-compliance with a given procedure does not in every case automatically render the exercise of legal authority void. When there is an attack on the exercise of legal authority mounted on the basis of non-compliance with statutory requirements, the function of the court is to decide the effect of that non-compliance. It is not in every case of non-compliance that the exercise of legal authority would be rendered void. Non-compliance can be to varying degrees – in some cases it may be trivial while in other cases it may be flagrant and fundamental. In *London & Clydeside Estates Ltd v. Aberdeen District Council & Anor* [1980] 1 WLR 182, Lord Hailsham succinctly explained this in the following manner:

> ... we are considering the effect of non-compliance by a statutory authority with the statutory requirements affecting the discharge of one of its functions. In the reported decisions there is much language presupposing the existence of stark categories such as 'mandatory' and 'directory,' 'void' and 'voidable,' a 'nullity,' and purely regulatory.'
>
> Such language is useful; indeed, in the course of this opinion I have used some of it myself. But I wish to say that I am not at all clear that the language itself may not be misleading in so far as it may be supposed to present a court with the necessity of fitting a particular case into one or other of mutually exclusive and starkly contrasted compartments, compartments which in some cases (eg, 'void' and 'voidable') are borrowed from the language of contract or status, and are not easily fitted to the requirements of administrative law. When Parliament lays down statutory requirement for the exercise of legal authority it expects its authority to be obeyed down to the minutest detail. But what the courts have to decide in a particular case is the legal consequence of non-compliance on the rights of the subject viewed in the light of a concrete state of facts and a continuing chain of events. It may be that what the courts are faced with is not so much a stark choice of alternatives but a spectrum of possibilities in which one compartment or description fades gradually into another. At one end of this spectrum there may be cases in which a

> fundamental obligation may have been so outrageously and flagrantly ignored or defied that the subject may safely ignore what has been done and treat it as having no legal consequences upon himself. In such a case if the defaulting authority seeks to rely on its action it may be that the subject is entitled to use the defect in procedure simply as a shield or defence without having taken any positive action of his own. At the other end of the spectrum the defect in procedure may be so nugatory or trivial that the authority can safely proceed without remedial action, confident that, if the subject is so misguided as to rely on the fault, the courts will decline to listen to his complaint.

The Federal Court endorsed this as a correct statement of law in *Pow Hing v. Registrar of Titles* [1981] 1 MLJ 155.

[28] Now, the issue here is simply whether the State Authority had committed a breach of the requirements of the Act, that breach being the alleged early entry into possession of the scheduled lands, and if so, whether that breach is so outrageous that it ought to invalidate the entire acquisition proceeding. Launching his attack that the early entry into possession was a breach of the requirements of the Act, learned counsel for the applicants maintained that formal possession requires gazetting. In support, learned counsel relied on *Ambujan Menon & Ors v. State of Kerala* AIR [1966] Ker 187 *State of Bombay v. Chatrabuj* AIR [1966] Guj 185 and *Khub Chand v. State of Rajasthan* AIR [1967] SC 1674. Lamin Mohd Yunus J (later PCA) in *Hong Lee Trading & Construction Sdn Bhd v. Taut Ying Realty Sdn Bhd* [1991] 1 CLJ 121; [1991] 2 CLJ (Rep) 722 had occasion to consider whether there would be an act of acquisition upon taking physical possession of the land or formal possession with a memorial entered on the register of titles. Having referred to ss. 18 and 19 of the Act for physical possession and s. 22 for formal possession, the learned judge said in that case:

> Under our law, in ordinary cases physical or actual possession of the land may be taken upon service of Form H or at any time thereafter or in urgent cases at any time on the expiry of 15 days after the notice in Form E is given (ie, informing of the date of the inquiry). But no vesting takes place upon taking of actual possession of the land. Section 22(1) provides that the Collector "shall take formal possession" of any scheduled land by serving upon the occupier a notice in Form K. The schedule to Form K shall contain a copy of the list of lands gazetted under subsection (1) of s. 8. The registered proprietor of the land, if he is not the

A occupier shall also be served with the copy of the notice. The Collector, after completing Form K shall make a memorial in appropriate register of titles as specified in subsections (2) and (3) of s. 9 to the effect that the whole of the scheduled land or so much of it has been acquired and has vested in the State
B Authority (s. 23). The Act is however silent as to when formal possession "shall" be taken under s. 22(1) and the making of memorial in appropriate register of titles under s. 23. By virtue of s. 9(1) it appears that the Collector must make "a note of the intended acquisition" so soon as a declaration under s. 8 is published. So also it appears mandatory for the Collector to take
C "formal possession" of any scheduled land by serving a notice in Form K on the occupier or proprietor of the land because of the word "shall".

After examining the manner in which formal possession is taken and vesting of the land in the State Authority is achieved, the
D learned judge concluded:

As the schedule to Form K must contain a copy of the list of lands gazetted under s. 8(1), the taking of formal possession can therefore take place just about the time or soon after the
E declaration under s. 8 is gazetted. At about the same time also, the Collector is to make a memorial in respect of all the scheduled land or any part of it to the effect that it has been acquired and has vested in the State Authority (s. 23). *It is at this point, in my view, that acquisition is effected or that there is the act of acquisition. I*
F *say so because of the happening of two things namely the taking of possession and the "vesting" of the land. The date of making the memorial must be taken to be the date of acquisition. This date cannot be earlier than the date of the gazette under s. 8 because that is the time when the acquiring authority really decides that the lands are needed. But it can be on the same date as the date of the said gazette or so soon*
G *after.* (emphasis added).

[29] The applicants rely on this passage and on the Indian authorities referred to earlier to support their contention that the alleged premature entry into possession of the scheduled lands renders the acquisition proceeding void. Since the "act of
H acquisition" happens upon taking possession and vesting of the land in the State Authority, and taking possession must be preceded by a s. 8 declaration, the applicants contend that the alleged early entry into possession invalidates the "subsequent"
I s. 8 declaration.

[30] The learned State Legal Adviser's response to this was that early entry into possession of scheduled lands cannot render the entire acquisition void but will only give rise to an action for damages for the tort of trespass against the trespasser. If a State Authority takes premature physical possession of land, that is possession taken prior to the publication of a s. 8 declaration or prior to the Land Administrator taking formal possession, and proceeds to cause damage to crops and trees or demolishes structures on the land, such acts only give rise to a cause of action for damages. In support of this, I was referred to passages in Kamleshwar Nath's *Law of Acquisition and Compensation* (Sixth Edition) (1978) and Om Prakash Aggrawala's *Compulsory Acquisition of Land in India* (1981).

[31] I have studied in great detail the Indian authorities which both sides have brought to my attention to determine if any one of them shed some light on the issue before me. Regrettably, not a single one of the Indian cases deal with the issue at hand. The cases the applicants cited do not support their contention that premature entry into possession invalidates the entire acquisition proceeding. Those cases are only authority for the proposition that formal possession requires gazetting. That proposition is consistent with the scheme of our Act, which is borne out in the consummate judgment Lamin Yunus J handed down in *Hong Lee Trading & Construction Sdn Bhd v. Taut Ying Realty Sdn Bhd* [1991] 1 CLJ 121; [1991] 2 CLJ (Rep) 722. It is also my view that the Indian cases which I have been referred to and *Hong Lee Trading* are not authority for the proposition that premature entry into scheduled lands amounts to a breach of the requirements of the Act.

[32] To my mind, the acquisition of scheduled lands commences when a s. 8 declaration is published in the Gazette. A declaration under that section is conclusive evidence that all the scheduled land referred to therein is needed for the purpose specified therein. In this case, the declaration was published in the Johor Gazette on 12 February 2003. This is the date the acquisition commenced in this case. The question whether an acquisition commenced properly ought only to be determined by reference to whether the requirements in s. 8 of the Act have been complied with. Once the acquisition is properly commenced, the Land Administrator can proceed to take formal possession of the land simultaneously or

A subsequently. This is done by making a note of the intended acquisition on the register of title pursuant to s. 9 of the Act and issuing Form K under s. 22.

[33] In *Hong Lee Trading & Construction Sdn Bhd v. Taut Ying*
B *Realty Sdn Bhd* [1991] 1 CLJ 121; [1991] 2 CLJ (Rep) 722, Lamin Yunus J (later PCA) expressed the view that it is mandatory for the Land Administrator to take the steps set out in ss. 9 and 22 of the Act after the s. 8 declaration is published. I must, with regret, part company with the learned judge here on
C account of precedent binding on me. The provisions in s. 9 are merely directory and not mandatory. The Federal Court decided this in *S Kulasingam & Anor v. Commissioner of Lands, Federal Territory & Ors* [1982] CLJ 65; [1982] CLJ (Rep) 314 where Eusoffe Abdoolcader J (as he then was) said:

D

> The issue accordingly revolves into the question as to whether the provisions of s. 9(1) are mandatory or directory. We need only refer to *Pow Hing & Anor. v. Registrar of Titles Malacca* [1981] 1 MLJ 155, 157 (at p. 157) with regard to the connotation of this dichotomy, and applying the test laid down in the judgment of this
> E Court in that case for the distinction between mandatory and directory requirements in a statute and having regard to the conclusive evidence clause stipulated in s. 8(3) and the fact that s. 8(1) requires the declaration in Form D to be published in the Gazette for general information, we are of the view that the
> F provisions of s. 9(1)(b) are directory and not mandatory as its purpose is in substance also covered by the publication of the declaration in Form D in the Gazette under s. 8(1).

[34] On the authority of *S Kulasingam*, I am of the view that the State took formal possession of the scheduled lands in this case
G when Form D was published in the Gazette. The fact that Form K was issued later is irrelevant since compliance with s. 9(1) (which operates jointly with s. 22) is not mandatory. The publication of Form D is the "act of acquisition" referred to in *Hong Lee*. The applicants allege that the State Authority had taken
H possession of the scheduled lands before the declaration under s. 8 was published in the Gazette. As formal possession of the scheduled lands can only be taken after the publication of the declaration in the Gazette, it is obvious that taking possession prior to that would be an act devoid of legal authority and
I consequently, illegal. If a landowner is evicted from his property

under such circumstances, the State will be liable for trespass and a subsequent publication of a declaration in the Gazette would not reverse the illegal entry since the declaration has no retrospective effect. It is settled law that the State would be open to a suit for damages for trespass in cases where the State has prematurely taken possession of scheduled land. Glidewell LJ approved the following statement as a correct representation of common law on this issue in the case of *Palatine Graphic Arts Co. Ltd. v. Liverpool City Council* [1986] QB 335:

> In other words, if the authority had no power of compulsory acquisition, but had simply evicted the landowner from his property, he would have a right of action in trespass, and the basis upon which damages would be assessed for a trespass which deprived him of his property permanently provides the test for the assessment of compensation.

[35] Similarly, in *Rickets v. Metropolitan Railway Co.* [1865] 34 LJQB 257, in the Court of Exchequer Chamber, Erie CJ, giving the judgment of the majority, said, at p. 261:

> The company claiming to take land by compulsory process, expel the owner from his property, and are bound to compensate him for all the loss caused by the expulsion; and the principle of compensation, then, is the same as in trespass for expulsion; and so it has been decided in *Jubb v. Hull Dock Co.*, 9 QB 443.

[36] Even the learned State Legal Adviser has acknowledged in the course of his submission that early entry into scheduled lands may invite an action for trespass. With respect, however, to learned counsel for the applicants, I find there is no merit in the contention that trespass into scheduled land prior to the publication of the declaration in the Gazette renders the entire acquisition proceeding null and void. The publication of the declaration in the Gazette puts the acquisition proceedings in motion when viewed from the vantage point that at this juncture, the State has decided that the scheduled land is required for the purposes specified in s. 3 of the Act. As long as the declaration is not in any way defective, the acquisition is properly commenced. Once the declaration is published, the State's possession of the land after the date of publication is legal. Just as the declaration cannot operate retrospectively to validate the possession of the land prior to its publication, early entry onto the land likewise

cannot invalidate a declaration that is later properly published. If the allegation of premature entry in this case were true, the effect of the publication of the declaration in the Johor Gazette, in my view, is simply this – the possession of the scheduled lands, formal or physical, after the date of publication is proper and legal, and possession of the scheduled lands prior to the publication was improper, thereby giving the dispossessed owner the right to claim damages for trespass from the date the State took possession of the lands up to the date the declaration was published in the Gazette.

[37] For the abovementioned reasons, I would answer the question whether the acquisition proceeding was invalidated by the early entry into possession and the demolition of the buildings on the subject lands prior to the date of the gazette notification in the negative.

Whether The Land Administrator Ought To Have Referred To The High Court Pursuant To s. 36(2) Of The Act The Questions Regarding The Validity Of The Acquisition Proceeding In Light Of The Alleged Premature Entry Into The Subject Lands And The Interpretation Of The Privatisation Agreement

[38] As I have already concluded that the alleged premature entry into the subject lands does not invalidate the acquisition proceeding, the question whether the Land Administrator ought to have referred this issue to the High Court is moot and I do not express any view on it. Insofar as the privatisation agreement is concerned, learned counsel for the applicants contends that its interpretation is a question of law. He took the stand that once proper questions of law are formulated in an enquiry, the Land Administrator is obliged to refer the matter to the High Court under s. 36(2) of the Act. Now, that section reads:

> The Land Administrator may, at any time of his own motion by application in Form M refer to the Court for its determination any question as to:
>
> (a) the true construction or validity or effect of any instrument;
>
> (b) the person entitled to a right or interest in land;
>
> (c) the extent or nature of such right or interest;

(d) the apportionment of compensation for such right or interest; A

(e) the persons to whom such compensation is payable;

(f) the costs of any enquiry under this Act and the persons by whom such costs shall be borne.

B

[39] The learned State Legal Adviser countered by pointing out that s. 36(2) of the Act states that the Land Administrator "may" refer a question to the High Court for its determination. The use of the word "may" is permissive and confers a discretion on the Land Administrator, not creating a mandatory obligation for the C Land Administrator to refer a question that arises in the course of the enquiry to the High Court. This submission brings to my mind the Court of Appeal's decision in *Perbadanan Nasional Insurans Sdn Bhd v. Pua Lai Ong* [1996] 3 CLJ 321, where Siti Norma Yaakob JCA (now CJ (Malaya)) explained the distinction between the D words "may" and "must" as follows:

> The word 'must' as opposed to 'may' is used in the rule, and we interpret that to mean as implying a peremptory mandate as opposed to a mere direction or discretion as the word "may" implies. E

[40] When approaching the task of interpreting the words the legislature has used in an Act of Parliament, I am mindful of the principles in the *Sussex Peerage Case* [1884] II CI & Fin 85 that if the words used in a statute are precise and unambiguous, then F the words must be given their natural and ordinary meaning since in such cases, the words themselves best declare the legislature's intention. This canon of interpretation is referred to as "the literal rule" but despite this rule, there are instances where courts have held that the words used in the statute ought not to be given its G plain or ordinary meaning. Consequently, even though the plain or ordinary meaning of the word "may" has been clearly explained in *Perbadanan Nasional Insurans Sdn Bhd v. Pua Lai Ong* [1996] 3 CLJ 321, the decision was not meant by design to apply to the interpretation of the word "may" in every statute in which the H word is used. The use of the word "may" while ordinarily connoting a discretionary power, when used in certain statutory context ought to be construed as imperative and creating an obligation. There is high authority to support treating the word "may" as "must" in some statutes, within certain strictures of I

course, which can be found in the instructive judgment of the Federal Court in *Thanimalai & The Government of Malaysia v. Lee Ngo Yew* [1975] 1 MLJ 125 where Suffian LP explained:

> *The question whether the legislature intends a particular provision to be mandatory or directory must in each case depend upon the scope and object of the particular statute or enactment. Further, we would have to look at the general, scheme of the statute or enactment and its express provisions. Sometimes, the word "may" in a statute or enactment is given an imperative meaning.* Thus, in Alderman Blackwell's case [1683] 1 Vern 152; 23 ER 381 the words in an Act of Parliament that the Chancellor may grant a Commission has been held to convey the imperative meaning of must. *Wherever a statute directs the doing of a thing for the sake of justice or the public good, the word "may" is the same as "shall".* (emphasis added)

[41] Based on the above passage, it is evident that the starting point here would be to consider the scope and purpose of the Act. Article 13 of the Federal Constitution protects as a fundamental liberty a person's rights to property. The article provides:

(1) No person shall be deprived of property save in accordance with law.

(2) No law shall provide for the compulsory acquisition or use of property without adequate compensation.

[42] Although the right to property is a fundamental liberty guaranteed under the Constitution, like all other rights, the freedom guaranteed is not absolute. This is obvious from the language employed in art. 13(1) which allows a person's property to be taken away "in accordance with law". Parliament is clothed with the power to make laws that provide the limits for the restriction on the right protected in art. 13. One such law is the Land Acquisition Act 1960, which not only provides the circumstances in which the individual's right to property may be expropriated for the greater good but also provides for the measure of adequate compensation required under art. 13(2). It can be surmised that the Act is, consequently, a parliamentary design for protection of the individual's right to property enshrined in the Constitution. The Act ensures that no individual's property is compulsorily acquired save in accordance with the requirements of the Act and that adequate compensation is paid when property

is acquired in accordance with the procedures set out in the Act. The scheme of the Act is to provide a machinery through which the State may acquire property from an individual equitably.

[43] Having identified the object of the Act, I now turn to consider whether s. 36(2) of the Act directs a reference court for the "sake of justice" (see *Thanimalai & The Government of Malaysia v. Lee Ngo Yew (supra)*). If so, then the legislature could have intended the word "may" in s. 36(2) to convey a peremptory mandate. In order to determine the rationale for a reference to court under s. 36(2) quite apart from the reference under s. 37, I would start by first considering the nature of the role of a Land Administrator in an enquiry. The role a Land Administrator plays in an enquiry is quasi-judicial. VC George J (as his Lordship then was) pointed this out in *Oriental and Rubber Oil Palm Sdn Bhd v. Pemungut Hasil Tanah, Kuantan* [1983] 1 MLJ 315 when his Lordship said:

> ... to my mind there is no question but that the holding of the enquiry pursuant to s. 12 and the making of the award pursuant to s. 14 are quasi-judicial functions which could and do affect the individual.

[44] When the legislature leaves the decision on a matter to a specified person or body, the court will not usurp the decision-making authority that has been conferred on that person or body. The court will not embark on a rehearing of the matter with a view to making original findings of fact. These trite principles of administrative law are exemplified in the following passage from the judgment of Lord Denning MR in *General Electric Co Ltd v. Price Commission* [1975] ICR 1 at p 12, which the Federal Court approved in *Pahang South Union Omnibus Co Bhd v. Minister of Labour and Manpower & Anor* [1981] 2 MLJ 199:

> Parliament often entrusts the decision of a matter to a specified person or body, without providing for any appeal. It may be a judicial decision, or a quasi-judicial decision, or an administrative decision. Sometimes Parliament says its decision is to be final. At other times it says nothing about it. In all these cases the courts will not themselves take the place of the body to whom Parliament has entrusted the decision. The courts will not themselves make the original findings of fact. They will not themselves embark on a rehearing of the matter: see *Healey v. Minister of Health* [1955] 1 QB 221.

[45] Although the court will not arrogate to itself decision-making powers that the legislature has conferred on an administrative person or body, there is a strong presumption that the legislature does not intend access to the courts to be denied. But where the legislature has appointed a specific tribunal and conferred it with jurisdiction to determine matters that directly affect the individual, it is necessary to resort to that tribunal at first instance. The court in such cases acts in a supervisory capacity over the tribunals to ensure that justice is done. It is for that reason that the court can issue prerogative writs, that is as a means of upholding the public interest in the administration of justice rather than simply protecting the right of an individual. In *Pahang South Union Omnibus Co Bhd v. Minister of Labour and Manpower & Anor* [1981] 2 MLJ 199, the Federal Court also endorsed the following passage from the judgment of Lord Denning MR in *General Electric Co Ltd v. Price Commission* [1975] ICR 1 at p 12:

> But, nevertheless, the courts will, if called upon, act in a supervisory capacity. They will see that the decision-making body acts fairly: see *Re HK (An infant)* [1967] 2 QB 617 at p 630; *R v. Gaming Board for Great Britain, ex p Benaim and Khaida* [1970] 2 QB 417. The courts will ensure that the body acts in accordance with the law. *If a question arises on the interpretation of words, the courts will decide it by declaring what is the correct interpretation:* see *Punton v. Ministry of Pensions and National Insurance* [1963] 1 WLR 186. And if the decision-making body has gone wrong in its interpretation, they can set its order aside: see *Ashbridge Investments Ltd v. Minister of Housing and Local Government* [1965] 1 WLR 1320 (I know of some expressions to the contrary, but they are not correct). (emphasis added)

[46] There are many other instances apart from those stated above which were highlighted in *General Electric Co Ltd v. Price Commission* but they are not relevant for present purposes. The passage quoted and in particular that part of it to which emphasis has been lent illustrates that while an administrative body should be allowed to carry out quasi-judicial functions conferred by a statute free from interference from any quarter, the court, nevertheless, can in certain circumstances step in to resolve any question of interpretation that has arisen in the course of the exercise of that quasi-judicial role. This proposition also finds support in the decision of the House of Lords in *Pyx Granite Co Ltd v. Ministry of Housing and Local Government & Ors* [1960] AC 260. In that case, the House of Lords considered whether an

application could be made to the court for a declaration on the proper interpretation of a statute that was relevant to the exercise of a quasi-judicial function by an administrative body. Viscount Simonds in his speech said:

> The appropriateness of the remedy was the final point on this part of the case. It was urged that, even if the court had jurisdiction to make the declaration claimed, it was a discretionary jurisdiction which should not be exercised in this case. My Lords, this plea should not, in my opinion, prevail. *It is surely proper that, in a case like this involving, as many days of argument showed, difficult questions of construction of Acts of Parliament, a court of law should declare what are the rights of the subject who claims to have them determined. I do not dissent from the contention of the respondents that, where the administrative or the quasi-judicial powers of the minister are concerned, declaratory judgments should not readily be given by the court. But here, if ever, was a case where the jurisdiction could properly be invoked. It might even be thought surprising that the minister should not be glad to have such questions authoritatively determined.* (emphasis added)

[47] If, as Viscount Simonds points out, the court has an inherent power to step in when there is a question of interpretation involved if only for the purpose of providing a decisive interpretation that an administrative body can rely on in exercising a quasi-judicial role given to it by a statute, what more in cases where the statute in question expressly provides an avenue for such questions to be referred to the court. When Parliament expressly provides in a statute such an avenue, the intention of the legislature must have been to permit the court to intervene to resolve the issue so that the administrative body may proceed to exercise its powers in line with the court's determination. The legislature must then expect the administrative body to refer the question to court and consequently, referring the question to the court must be imperative for the attainment of justice.

[48] At the risk of repetition, the Land Administrator, as case law has settled, exercises a quasi-judicial role in an enquiry. He is conferred decision-making powers that affect the rights of persons. Bearing this in mind and returning to s. 36(2) of the Act, the word "may" in the section ought to be interpreted as imperative and the Land Administrator must refer a question of interpretation that has arisen in the course of an enquiry to the court for

A determination. Once the court has determined the proper interpretation, the Land Administrator can then proceed to exercise his decision-making powers having regard to the interpretation given by the court.

B **[49]** This brings me back to the words of Suffian LP in *Thanimalai* that if "a statute directs the doing of a thing for the sake of justice or the public good, the word 'may' is the same as 'shall'". Section 36(2) of the Act was not enacted in vain. If there arises difficult questions of interpretation or construction during an C enquiry, the legislature has provided the Land Administrator with an avenue to obtain an authoritative and decisive answer to the question by recourse to the court. This recourse was provided for the "sake of justice" so that the Land Administrator can exercise his quasi-judicial functions in an enquiry armed with a judicial D ruling on the question of construction relevant to a matter to be decided at the enquiry. As Viscount Simonds pointed out in the *Pyx Granite* case, it "might even be thought surprising that the (Land Administrator) should not be glad to have such questions authoritatively determined" since it would undoubtedly assist him E in the discharge of his duties under the Act.

[50] In the present case, the applicants contend that the privatisation agreement gives rise to questions of interpretation that will have a bearing on the compensation payable. The privatisation F agreement in this case deals with the development of the lands that have now been compulsorily acquired. Since the agreement deals with the development of the land and creates rights in the land, it creates a legitimate expectation for the parties deriving any title or benefit under it – see *Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan* G *Tanggungan* [1999] 3 CLJ 65 and *Glen Waverley Sdn Bhd v. Pengarah Tanah & Galian, Negeri Selangor & Anor* [2001] 8 CLJ 164. The agreement itself is complex. Through it, the State on the one part has alienated the lands in exchange for the other party's H obligation to develop the lands accordingly. The other party, naturally, benefits from privatisation agreement through the control of the lands and the developments thereon for the duration of the lease of the alienated lands. The facts of this case are somewhat peculiar because the State, having alienated the lands to the first I applicant, now seeks to re-acquire it. The State may certainly do so pursuant to the provisions of the Act but in assessing

compensation, I agree with learned counsel for the applicants that the interpretation of the privatisation is material. As the interpretation of the privatisation raises complex and difficult questions of construction which a judicial tribunal would be better equipped to deal with, I am of the view that the Land Administrator, being an administrative person who would benefit from a ruling from the court on the issue, is obliged to refer the question of the interpretation of the agreement to the court under s. 36(2) of the Act.

[51] For the preceding reasons, I would answer the question whether the Land Administrator ought to have referred to the High Court pursuant to s. 36(2) of the Act the questions regarding the interpretation of the privatisation agreement in the affirmative. I consequently grant an order of *certiorari* to quash the order of the first respondent on 31 July 2003 refusing to refer to the court the aforesaid question and an order of *mandamus* directing the first respondent to refer the said question to the court for determination under s. 36(2) of the Act. The cost of this application goes to the applicants.